

*Cerebral Oxygenation*AMENDMENTS TO THE CLAIMS

*edit*

1. (Original): An optical sensor comprising:  
an optical source capable of being positioned on a tissue and emitting infrared light into the tissue at a plurality of selected wavelengths;  
a photodetector capable of detecting the selected wavelengths of light from the tissue, the photodetector being positioned on the tissue removed from the optical source but sufficiently close in proximity to the optical source to contact the same general tissue;  
an oscillator coupled to the optical source and providing radio frequency modulation of the optical source, the optical source being responsive to the radio frequency modulation by emitting the plurality of selected wavelengths, the selected wavelengths being selected to generate measurable changes in absorbance of analytes of interest within the tissue.

*other*

2. (Original): An optical sensor according to Claim 1 further comprising:  
a demodulator coupled to the photodetector and capable of detecting phase changes of a signal indicative of the radio frequency modulation for the selected wavelengths of light passing through the tissue to measure path length.

3. (Original): An optical sensor according to Claim 1 further comprising:  
a wavelength modulator coupled to the oscillator and capable of controlling radio frequency modulation of the optical source to emit the plurality of selected wavelengths that are selected to generate the measurable changes in absorbance of analytes of interest within the tissue.

4. (Original): An optical sensor according to Claim 3 further comprising:  
the wavelength modulator being capable of varying the wavelength of the light entering the tissue for a plurality of measurements to reduce scattering errors.

5. (Original): An optical sensor according to Claim 3 further comprising:

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[120]

*(Handwritten signature/initials)*

600/389  
7-27-2001 *Drandy*

REMARKS

37-39  
*Cancelled*

35  
26  
8

The above-identified application is United States application serial number 09/917,414 filed on July 27, 2001. Claims 1-39 are pending in the application. Claims 37-39 are withdrawn from consideration without prejudice. Claims 8-34 are allowed. Claims 1-7, 35, and 36 are rejected. Claims 1-5, 35 and 36 are rejected under 35 U.S.C. §102(e) as being anticipated by Walker (U.S. Patent No. 6,453,183). Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Ford et al (U.S. Patent No. 5,943,158). Claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Asada et al (U.S. Patent No. 6,483,971). The Walker reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. §102(e). The rejection may be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Rejection of Claims Under 35 USC §102

Regarding the rejection of Claims 1-5, 35, and 36 under 35 U.S.C. §102(e) as being anticipated by Walker (U.S. Patent No. 6,453,183), the applicants have attached a Declaration under 37 CFR 1.132 signed by inventor Stephen D. Walker that unequivocally declares sole inventorship of the subject matter disclosed but not claimed in the Walker reference, and also declares sole inventorship of the subject matter of Claims 1-5, 35, and 36 of the present application. Also attached is a Declaration under 37 CFR 1.132 signed by all other inventors of the present application that disclaims inventorship of Claims 1-5, 35, and 36, and attributes these claims as the invention of Stephen D. Walker. Accordingly, the invention in the rejected claims is not described in a patent granted on an application for patent by another and the claims are allowable under 35 U.S.C. §102(e). The attached Declarations under 37 CFR 1.132 accordingly assert that any invention disclosed but not claimed in the Walker reference was derived from the inventor of the present application and thus is not the invention "of another".

*Change modulation intensity  
phase between light emitted in to and light reflected back*  
*disobey*  
*Wa*

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*modulation phase difference*  
*dd*  
*Wa*

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Serial No. 09/917,414

*Walker 6,453,183 | Asada 8-34*  
*Ford 5,943,158 | 6,483,791 1-5, 35, 36, 6-7*

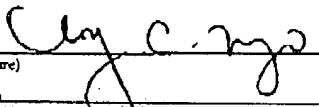
Rejection of Claims Under 35 USC §103

Regarding the rejection of Claims 6 and 7 under 35 U.S.C. §103(a) as being unpatentable over Walker (U.S. Patent No. 6,453,183) in view of Ford et al (U.S. Patent No. 5,943,158), and over Walker in view of Asada et al (U.S. Patent No. 6,483,791), respectively, the Declarations under 37 CFR 1.132 remove Walker as a reference so that the claims are allowable.

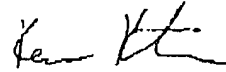
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# CONCLUSION

In view of the declarations attached and remarks set forth herein, Applicant believes Claims 1-36 are in form for allowance and a notice to that effect is solicited. No new matter has been added. In the event it would facilitate prosecution of this application, the Examiner is invited to telephone the undersigned at (949) 251-0250.

I hereby certify that this correspondence is being facsimile transmitted to the USPTO, Central Number at (703) 872-9306 on the date shown below:	
	
(Signature)	
Ken J. Koestner	
(Printed Name of Person Signing Certificate)	
April 5, 2004	
(Date)	

Respectfully submitted,



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